

Opinion No. 23-3738

November 3, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. James A. French, State Highway Engineer, Santa Fe, New Mexico.

State May Keep Traffic off Highways Under Construction.

OPINION

{*98} We have your inquiry submitting substantially, the following:

Let me know what authority a construction engineer has in the matter of posting signs for the purpose of keeping traffic off of roads under construction.

I have particular reference to F. A. P. No. 89 where the traffic is greatly damaging the road by tearing down barricades and going over same in its unfinished condition before we have had time to have it thoroughly rolled and compacted. The result is that the road is being deeply rutted by vehicles before it has been placed to section, spread and rolled properly.

{*99} I would like to know whether or not the Project Engineer of this particular job, or any other job, or the District Engineer has any authority to post up signs to enforce the law in this particular.

Keeping Traffic Off Roads Under Construction

The public highways in this state are dedicated to the reasonable use thereof by the public.

It shall be unlawful for any person to injure or damage any public highway by any unusual, improper or unreasonable use thereof. -- Sec. 10, Chap. 94 S. L. 1921.

Tearing Down Barricades

It shall be unlawful for any person to injure or damage any sign, sign post or structure upon or used or constructed in connection with any public highway for the protection thereof or regulation of traffic by wilful mutilation, defacing or destruction thereof. -- Sec. 10, Chap. 94 S. L. 1921.

Penalties

Any person violating any provision of this Section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Twenty-five (\$ 25.00) dollars nor more than Five Hundred (\$ 500.00) dollars, or by imprisonment in the county jail not less than five days nor more than thirty days or by both such fine and imprisonment, and the owner and the operator of such vehicle, truck, tractor, or engine, shall be jointly and severally liable to the State, county or municipality as the case may be for the actual damage caused by the operation, conducting or hauling thereof over any public highway, street, bridge, culvert or structure in violation of any provision of this act to be collected by suit brought in the name of the State, county or municipality having control of such highway or street; and such vehicle, truck, tractor, or engine may be attached and held to satisfy any judgment for such damages.

The proceeds of any such judgment shall be paid to the treasurer of the State, or of such county or municipality and placed to the credit of a fund for the construction and improvement of roads or streets. -- Sec. 10, Chap. 94 S. L. 1921.

Authority and Power of Local Officials

Sheriffs, deputy sheriffs, constables, marshals, police officers and all peace officers, shall have power to arrest any person violating any provision of this act on view or upon warrant issued by any justice of the peace or magistrate. Such officers are also authorized and directed to take into custody any vehicle involved in the violation of any provision of this act and hold the same until all fees, fines, costs, and damages therefor shall be paid: Provided that the owner or person in control of such vehicle may secure its release by furnishing a good and sufficient bond as required by the officer or magistrate before whom the case is prosecuted.

{*100} The fee for making the arrest of any person violating any provision of this act shall upon conviction of the person or persons arrested be assessed as part of the costs and paid to the officer making such arrest, but shall not exceed five (\$ 5.00) dollars in any case. -- Sec. 11, Chap. 94, S. L. 1921.

We think it proper to give the public notice of the prohibition of traffic on any uncompleted highway by the posting of notices or signs, such as you have indicated in your inquiry. The erection of barricades, mentioned in your inquiry, is also advisable in order that the public may have due notice of the condition of the highway and that traffic thereon is prohibited. Any duly authorized agent of your department will be authorized to post these signs, or notices, and to authorize the construction of such barricades.

Motor Vehicle Traffic

The state authorities having control of any highway shall have authority to prohibit the use thereof for motor vehicles traffic thereon when, in their judgment, on account of wet weather, recent construction, necessity for repair or other condition, such traffic would cause serious damage to such highway.

In such cases, plainly printed notices shall be posted at both ends of the section upon which traffic is prohibited or restricted and at points where such roads leave the nearest city or town in both directions.

It shall be unlawful to use such highways in any manner contrary to such notices. --
Sec. 12, Chap. 96 S. L. 1923.

Section 14 of the said 1923 act provides penalties for violation of said section 12.

Any agent of the State Highway Commission would be authorized to post the notices prohibiting traffic where the state is in control.

The laws appear to be fully adequate to protect the highway in question and it should be necessary only for you to get in touch with the District Attorney or sheriff in that particular locality and I feel sure the highway will receive the protection that it requires.